

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND REGION
STATE OF WASHINGTON

BSRE POINT WELLS, LP,

Petitioner,

v.

CITY OF SHORELINE,

Respondent.

CASE NO. 11-3-0007

(BSRE)

**ORDER DENYING INTERVENTION,
GRANTING SIXTEENTH SETTLEMENT
EXTENSION AND REVISING
PRELIMINARY SCHEDULE**

This matter came before the Board on Richmond Beach Advocates' Motion to Intervene filed January 20, 2015, and the Joint Status Report and Request for Sixteenth Extension filed by Petitioner BSRE and Respondent City of Shoreline on January 21, 2015. The Board denies intervention for Richmond Beach Advocates and grants the settlement extension requested by BSRE and City of Shoreline.

MOTION TO INTERVENE

Richmond Beach Advocates seek to intervene in these proceedings "in order to expedite the adjudication of the issues raised in the Petition and to zealously defend the validity of Ordinance 596."¹ Petitioner BSRE Point Wells, LP, and Respondent City of Shoreline both oppose the intervention as impairing the interests of justice by impeding orderly settlement.²

BSRE has vested development rights³ to develop a strip of waterfront land in unincorporated Snohomish County which can only be accessed through Richmond Beach

¹ RBA's Motion to Intervene, p. 2, and Declaration of Jerry Patterson in Support of Richmond Beach Advocates' Motion to Intervene, January 20, 2015, ¶¶ 7-8.

² BSRE's Memorandum in Opposition to Motion to Intervene, January 30, 2015; Shoreline's Response to Richmond Beach Advocates' Motion to Intervene, January 30, 2015.

³ See *Town of Woodway and Save Richmond Beach, Inc., v. Snohomish County and BSRE Point Wells, Inc.*, 180 Wn.2d 165, 322 P.3d 1219 (2014).

1 Drive, a local street in the City of Shoreline. The City of Shoreline enacted Ordinance 596
2 amending its Point Wells subarea plan to limit the Richmond Beach Drive roadway capacity
3 until a transportation corridor study and mitigation plan could be completed and funding
4 sources committed. Amended Policy PW-12 provides:

5 Policy PW-12. In view of the fact that the Richmond Beach Drive between
6 NW 199th St and NW 205th St. is a local road with no opportunities for
7 alternative access to dozens of homes in Shoreline and Woodway, the City
8 designated this as a local street with a maximum capacity of 4,000 vehicle
9 trips per day. Unless and until 1) Snohomish County and/or the owner of the
10 Point Wells Urban Center can provide to the City the Transportation Corridor
11 Study and Mitigation Plan called for in Policy PW-9, and 2) sources of
12 financing for necessary mitigation are committed, the City should not
consider reclassifying this road segment.

13 BSRE timely challenged the City's adoption of Ordinance 596 for procedural defects
14 and inconsistency with Snohomish County's plan.⁴ Prior to the Board's prehearing
15 conference, BSRE and the City, with the Board's approval, stayed further proceedings so as
16 to enable the completion of the traffic corridor study and financed mitigation agreement
17 which the Ordinance calls for as preconditions to reclassification of the road segment. The
18 work has been protracted, with the parties requesting sixteen 90-day extensions to date to
19 accommodate technical studies and public input. In accordance with WAC 242-03-575(4),⁵
20 the Board has required and the parties have provided periodic status reports to ensure
21 progress on resolving the dispute. The parties' current status report projects "a joint
22 recommendation, agreed road design, and list of mitigation projects [] shall be presented to
23 the Shoreline City Council later in 2015. . . . With Planning Commission review, possible
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26 ⁴ The Legal Issues are set forth in the Petition for Review, April 11, 2011, as follows:

- 27 1. Did the City of Shoreline's adoption of Ordinance No. 596 fail to comply with the external consistency
28 provisions of RCW 36.70A.100 regarding consistency with adjacent jurisdictions?
29 2. Did the City of Shoreline's adoption of Ordinance No. 596 fail to comply with RCW 36.70A.130(2)(a)
30 and (b) which requires that "updates, proposed amendments, or revisions to a comprehensive plan are
31 [to be] considered by the governing body of the county or city no more frequently than once every
32 year," and "all proposals shall be considered by the governing body concurrently so that cumulative
effect of the various proposals can be ascertained"?
3. Did the City of Shoreline's adoption of Ordinance No. 596 fail to comply with RCW 36.70A.130(2)(b)
by knowingly declaring an emergency, thereby avoiding the requirements of RCW 36.70A.130(2)(a)
and (b), when no such emergency existed?

⁵ WAC 242-03-575(4): "The presiding officer may require status reports from the parties to determine whether progress is being made on resolving the dispute."

1 amendments to the level of service for the Richmond Beach Road corridor are expected to
2 come to the Shoreline City Council mid-2015.”⁶

3 Richmond Beach Advocates assert their interests are not well represented as the
4 parties (1) have delayed a decision for nearly four years and (2) have “little to no interest in
5 having the 4000 ADT limit for a portion of Richmond Beach Drive upheld.”⁷ RBA states its
6 interest is “in insuring that the 4000 ADT set forth in the Ordinance is zealously defended.”⁸
7 RBA does not indicate which of the parties it seeks to support or on which issues
8 intervention is sought.
9

10 The parties respond that Ordinance 596 established a condition for reclassifying
11 Richmond Beach Road, not a permanent embargo on roadway improvements. The parties’
12 efforts for the past several years have been zealously addressing the conditions articulated
13 in the Ordinance. The Board agrees. RBA’s intervention does not address the stated legal
14 issues in the Petition for Review. Rather, the intervention is intended to impede settlement
15 of this action and is antithetical to the Board’s preference for voluntary resolution. RCW
16 36.70A.300(2)(b); WAC 242-03-575. RBA cannot be admitted as an intervenor on the side
17 of either the City or BSRE because RBA’s purpose is to oppose the work that is underway
18 by both parties to resolve the case by meeting the reclassification criteria spelled out in
19 Policy PW-12.
20

21 WAC 242-03-270 provides that intervention may be granted upon various
22 considerations but mandates “[t]he granting of intervention must be in the interests of
23 justice.” The Board finds the interests of justice will not be served by granting intervention to
24 a group that seeks to prevent completion of a settlement process in which both petitioner
25 and respondent have major investments. The settlement process seeks to effectuate the
26 conditions laid down in the challenged Ordinance, so that RBA’s stated concern for the
27 validity and enforcement of the Ordinance appears wide of the mark.
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29 Further, by denial of intervention, RBA is not being denied a remedy. RBA may
30 comment in the Planning Commission, SEPA, and City Council proceedings and seek to
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⁶ Joint Status Report and Request for Sixteenth Extension, January 20, 2015, p. 3.

⁷ RBA’s Motion to Intervene, at 1-2.

⁸ *Id.* at 7.

1 shape the outcome. Finally, if RBA has reason to believe that the City Council's final action
2 does not comply with the GMA, RBA may file a petition for review within 60 days of the final
3 action. Denial of intervention preserves the interests of justice for RBA.

4 Under the circumstances of this case, **the Board finds** intervention by RBA is not in
5 the interests of justice. The Motion to Intervene is **denied**.
6

7 **REQUEST FOR SETTLEMENT EXTENSION**

8 Pursuant to RCW 36.70A.300(2)(b) and WAC 242-03-575, the Board may extend its
9 180-day deadline for issuing a decision in order to facilitate resolution of the dispute "if
10 additional time is necessary to achieve a settlement, and an extension is requested by all
11 parties." One or more extensions of up to 90 days may be granted.
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13 In the present case, the Joint Status Report and Request for Sixteenth Settlement
14 Extension, January 20, 2015, advised the Board of progress on the joint City of Shoreline/
15 BSRE Transportation Corridor Study for Richmond Beach Drive. The Petitioner and the
16 City have jointly sponsored studies to determine appropriate mitigation to the City's
17 transportation network for impacts of Petitioner's proposed development. Multiple public
18 meetings and workshops have been held to obtain public input. The City has also obtained
19 independent peer review. The City and BSRE state they are "working to finalize a joint
20 recommendation, agreed road design, and list of mitigation projects" for City Council
21 decision. The City would then review the challenged comprehensive plan policy for possible
22 amendment. With required Planning Commission review, such amendment would not come
23 before the City Council until mid-2015, requiring one further settlement extension prior to a
24 stipulated dismissal of this case.
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27 The Board finds the parties continue to pursue a good-faith effort to resolve the issue
28 on appeal in consideration of the mandates of the Growth Management Act. Pursuant to
29 WAC 242-03-575, the Board **grants** the motion and **amends** the case schedule to provide
30 an additional 90 days for the purpose of settlement negotiation. The Final Decision and
31 Order deadline is **October 5, 2015**.
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REVISED PRELIMINARY SCHEDULE

The Preliminary Schedule is amended as follows:

April 12, 2011	Petition Filed
May 6, 2011	Settlement Extension and Amended Preliminary Schedule
August 4, 2011	Second Settlement Extension and Amended Schedule
November 7, 2011	Third Settlement Extension and Amended Schedule
February 3, 2012	Fourth Settlement Extension and Amended Schedule
May 4, 2012	Fifth Settlement Extension and Amended Schedule
August 3, 2012	Sixth Settlement Extension and Amended Schedule
November 2, 2012	Seventh Settlement Extension and Amended Schedule
February 4, 2013	Eighth Settlement Extension and Amended Schedule
May 6, 2013	Index Filed
May 7, 2013	Ninth Settlement Extension and Amended Schedule
August 2, 2013	Tenth Settlement Extension and Amended Schedule
November 12, 2013	Eleventh Settlement Extension and Amended Schedule
January 29, 2014	Twelfth Settlement Extension and Amended Schedule
April 29, 2014	Thirteenth Settlement Extension and Amended Schedule
August 1, 2014	Fourteenth Settlement Extension and Amended Schedule
October 30, 2014	Fifteenth Settlement Extension and Amended Schedule
February 4, 2015	Order Denying Intervention, Granting Sixteenth Settlement Extension and Revising Schedule
April 28, 2015	Status Report and Request for Extension due
May 5, 2015 10:00 a.m.	Telephonic Prehearing Conference Call 1 (800) 704-9804 and use pin 4364567#
May 12, 2015	Prehearing Order
May 26, 2015	Deadline for Dispositive Motions and for Motions to Supplement the Record (proposed supplements to be attached)
June 5, 2015	Deadline for Response to Dispositive Motions or Motions to Supplement the Record
June 12, 2015	Deadline for Reply to Dispositive Motions or Motions to Supplement the Record
June 22, 2015	Anticipated date of Order on Motions

July 13, 2015	Deadline for Petitioner's Prehearing Brief (with exhibits)
July 27, 2015	Deadline for Respondent's and Intervenor's Prehearing Briefs (with exhibits)
August 3, 2015	Deadline for Petitioner's Reply Brief (optional)
August 13, 2015 10:00 a.m.	Hearing on Merits of Petition Location to be determined
October 5, 2015	Final Decision and Order Deadline

DATED this 4th day of February, 2015.

Margaret Pageler, Presiding Officer